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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

To: The Commission

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Cosmos Broadcasting Corporation ("Cosmos"), licensee of television station KPLC(TV), NTSC Channel 7 and DTV Channel 8, Lake Charles, Louisiana, by its attorneys and pursuant to 47 C.F.R. § 1.429(f), hereby opposes the Petition for Reconsideration ("Petition") of the *Memorandum Opinion and Order of the Sixth Report and Order* in MM Docket No. 87-268, FCC 98-24 (released Feb. 23, 1998) ("*DTV Allotment MO&O*"), filed April 20, 1998 by Noe Corp. L.L.C. ("Noe"). Noe proposes a change to the DTV Table of Allotments with respect to KPLC(DT). After sorting through numerous and fundamental inaccuracies in Noe's Petition, little substance remains by which Cosmos can meaningfully comment. Accordingly, Cosmos urges the Commission to dismiss Noe's Petition.

In the initial DTV Table of Allotments accompanying the *Sixth Report and Order*, KPLC(DT) was assigned Channel 53.<sup>1/</sup> Cosmos petitioned the Commission to reconsider and

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<sup>1/</sup> *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd 14588 (1997) ("*Sixth Report and Order*").

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reassign Channel 8 to the station, maintaining, *inter alia*, that the Commission should permit paired adjacent channel operation where possible to allow the benefit of co-located facilities.<sup>2/</sup> Cosmos noted in its supplement that the assignment would result in short-spacing to Noe's licensed station KNOE-TV, NTSC Channel 8, Monroe, LA, but that a significant part of the affected area was either undeveloped federal property or outside of KNOE-TV's DMA. In the *DTV Allotment MO&O*, the Commission granted the reassignment to Channel 8, but because of interference concerns to KNOE-TV, authorized KPLC(DT) at significantly reduced power and imposed the use of a directional antenna with a severe null.<sup>3/</sup>

Noe bases its entire showing on the erroneous presumption that KPLC(DT) is authorized with a maximum ERP of 17 kW, which leads it to overstate KPLC(DT)'s authorized coverage area. As listed in the DTV Table of Allotments, KPLC(DT)'s authorized maximum ERP is 3.2 kW—only 19% of the value advanced by Noe. While Cosmos cannot conclude with certainty which sources Noe relied upon in claiming that KPLC(DT) could operate with an ERP some five times greater than is permitted, it obviously did not obtain the facts from the one place it should have—the Commission's DTV Table of Allotments.

Despite Noe's erroneous allegations of severe interference, the engineering analysis of du Treil, Lundin & Rackley, Inc., attached hereto as Attachment A, confirms that the interference caused to KNOE-TV by KPLC(DT) would affect only 0.8% of KNOE-TV's

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<sup>2/</sup> See Cosmos Petition at 12-13; Cosmos Supplement at 10-11.

<sup>3/</sup> *DTV Allotment MO&O*, ¶219-220. Like all other allotments, information regarding the details for KPLC(DT) allotment is publicly available at the Commission's Web site.

population within its current Grade B coverage contour<sup>4/</sup>—a value that is provided for in Appendix B of the DTV Table of Allotments contained in the Commission's *Sixth Report and Order*. This level of interference is hardly an actionable claim as nearly one of every four NTSC stations will experience new interference values of 0.8% or greater as a result of DTV.<sup>5/</sup> Given the widespread acceptance of this degree of minimal interference, Noe's claims do not merit a further readjustment to the DTV Allotment Table. If every station suffering from 0.8% or greater of new interference sought reconsideration, the DTV Allotment Table would be thrown into regulatory gridlock. Moreover, of the 0.8% of KNOE-TV's service area that may be affected by KPLC(DT)'s signal, only one small pocket, amounting to 153 persons, is within the KNOE-TV DMA of Monroe.<sup>6/</sup> The remainder of the new interference occurs outside of the Monroe DMA. This is hardly a "deleterious effect" as Noe claims it will suffer.

Nevertheless, Cosmos understands the importance of broad cooperation during this important transition to DTV. Accordingly, while the degree of new interference is hardly actionable, Cosmos is prepared to work with Noe to address concerns about this interference created by KPLC(DT)'s authorized allotment. For example, one option would involve coordinated efforts to install a translator in the affected area to minimize the predicted interference. Cosmos has contacted Noe to convey this message.

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<sup>4/</sup> See Engineering Statement of du Treil, Lundin & Rackley, Inc. at 1.

<sup>5/</sup> *Id.* at 2.

<sup>6/</sup> *Id.*

In an attempt to support its request that the Commission modify the allotment of KPLC(DT), Noe complains that it was unaware of the issues in the DTV proceeding and, had it been aware, would have previously commented on KPLC(DT)'s allotment. Noe complains that its ignorance stems from a lack of service and that the allotment would not have been granted had it been served. Yet the Commission's rules, which Noe fails to reference in its Petition, clearly state that petitions for reconsideration need not be served on parties to the proceeding.<sup>7/</sup> Responsible broadcasters aware of the rules recognized that they had to review all of the petitions filed in the proceeding.

Noe had significant notice and comment opportunities in the DTV proceeding. The Commission placed the list of petitions for reconsideration of the *Fifth and Sixth Report and Orders*, including Cosmos's petition, on public notice and invited oppositions.<sup>8/</sup> Subsequent to that, the Commission permitted interested parties to supplement their petitions for reconsideration. Those supplements, as well, were placed on public notice allowing parties the opportunity to comment again.<sup>9/</sup> At the end of 1997, the Commission provided a third

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<sup>7/</sup> 47 C.F.R. § 1.429(e). The rule notes that where the number of parties is relatively small, the Commission "encourages" service to others. The Commission received 231 petitions for reconsideration of the *Fifth and Sixth Report and Orders*—a large number by any measure. Cosmos was not required to serve all of these parties and, accordingly, did not do so.

<sup>8/</sup> Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, Federal Communications Commission, Public Notice, Report No. 2207, 1997 FCC LEXIS 3273 (June 27, 1997).

<sup>9/</sup> Supplemental Petitions for Reconsideration and Clarification in Rulemaking Proceeding, Federal Communications Commission, Public Notice, Report No. 2222, 1997 FCC LEXIS 4711 (Sept. 2, 1997).

opportunity to comment on DTV allotments, following MSTV's proposal for widespread modifications.<sup>10/</sup> Noe had nearly half a year to review the proceeding and the petitions filed by Cosmos and others, but it apparently refrained from doing so.

Other broadcasters were certainly aware of the petition for reconsideration that was filed by Cosmos on June 13, 1997, with some submitting oppositions indicating their intention to respond to the proposals of Cosmos after the August 22, 1997 deadline for supplementing petitions. Cosmos served those parties with its supplement, consistent with the Commission's encouragement of exchanging pleadings among interested parties when the number of parties is relatively small. Had Noe reviewed the proceeding and commented on KPLC(DT)'s allotment request, Cosmos would have served it as well.<sup>11/</sup> Accordingly, Noe's implication that Cosmos treated it differently from other similarly situated broadcasters is unsupportable.

The most troubling aspect of Noe's petition is a baseless implication of clandestine cooperation between Cosmos and another station, KUHT-TV. In footnote one of its Petition, Noe asserts that Cosmos did not serve KUHT-TV "because counsel for Cosmos are also counsel for Station KUHT-TV."<sup>12/</sup> Cosmos disclosed in its supplement that KUHT-TV would

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<sup>10/</sup> See *DTV Allotment MO&O*, ¶10.

<sup>11/</sup> As Noe's own Petition points out, Cosmos identified at the earliest of stages its interest in Channel 8.

<sup>12/</sup> Noe Petition at 2 n.1. Noe offers no conditional phrases of "apparently" or "perhaps," but asserts as fact its analysis that a lack of service flowed from the notion of shared counsel.

not oppose the assignment to KPLC(DT) if it reverted to its NTSC channel assignment after the DTV transition, a position Cosmos fully intends to honor.<sup>13/</sup> Based upon other assertions in Noe's Petition, it is not clear to Cosmos whether Noe is aware of this on-the-record disclosure. Cosmos followed the Commission's rules concerning service and Noe could have referred to them as well if it had used its efforts to review the docket rather than conjure its own explanations. Unless Noe can provide supportable allegations, it cannot preserve an expectation of good faith.<sup>14/</sup>

In sum, Noe's inattentiveness and numerous inaccuracies make it difficult for Cosmos to comment meaningfully on Noe's Petition for Reconsideration. Noe's interference analysis is incorrect because it does not rely on KPLC(DT)'s ERP as authorized by the Commission. The new interference caused to KNOE-TV from KPLC(DT)'s DTV Channel 8 assignment affects only 0.8% of KNOE-TV's population within its Grade B coverage contour—an amount that is consistent with other DTV allotments.

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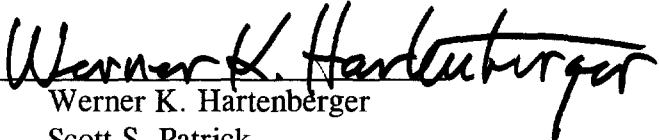
<sup>13/</sup> Cosmos Supplement at 11.

<sup>14/</sup> Noe is mistaken if it believes that § 1.420(f)'s exception is applicable. By its petition, Cosmos was not seeking to amend the FM or TV Tables of Allotments, but was seeking reconsideration of the DTV Table of Allotments.

Cosmos opposes Noe's Petition for reconsideration and urges the Commission to dismiss Noe's Petition in its entirety.

Respectfully submitted,

**COSMOS BROADCASTING CORPORATION**

By:   
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Dated: May 26, 1998

**ATTACHMENT A**

**Engineering Statement**

**KPLC(DT) — Evansville, IN**

du Treil, Lundin & Rackley, Inc.



OPPOSITION TO PETITION FOR RECONSIDERATION  
TECHNICAL STATEMENT  
COSMOS BROADCASTING CORPORATION  
KPLC-TV LAKE CHARLES, LOUISIANA

This Technical Statement was prepared for Cosmos Broadcasting Corporation, licensee of KPLC-TV on NTSC Channel 7 at Lake Charles, Louisiana. KPLC-TV had requested and was granted the substitution of the FCC assigned DTV channel from Channel 53 to Channel 8. This technical statement addresses the impact of the KPLC-DT Channel 8 assignment upon KNOE-TV on NTSC Channel 8 assigned to Monroe, Louisiana. Specifically, this statement is a response to the Noe Corp. L.L.C. (herein "Noe"), licensee of KNOE-TV, petition for reconsideration concerning the KPLC-DT channel.

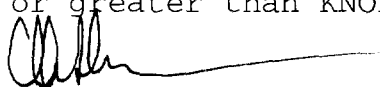
Within the Noe Engineering Statement, KPLC-DT was assumed to have an effective radiated power of 17 kilowatts. This value was used to calculate the interference to KNOE-TV from KPLC-DT. While KPLC initially suggested this effective radiated power, the KPLC-DT effective radiated power as authorized by the Commission was reduced to 3.2 kilowatts. Therefore, the interference analysis contained within the Noe petition, based on a KPLC-DT effective radiated power of 17 kilowatts, does not reflect what was actually authorized by the Commission.

The new interference caused to KNOE-TV from the DTV Channel 8 assignment of KPLC-DT only affects 0.8 percent of the KNOE-TV population within its current Grade

B coverage contour. This value is provided in Appendix B, DTV Table of Allotments, contained within the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order. Considering the KNOE-TV current service area is 688,000 persons, it can be derived that the KPLC-DT new interference only affects approximately 5,500 persons.

Figure 1 is a map showing the predicted interference areas to KNOE-TV from KPLC-DT. The red areas are existing NTSC interference. The black areas are new interference from KPLC-DT. As can be seen, only one small pocket of new DTV interference (located in Winn Parish), occurs within the KNOE-TV Designed Market Area (DMA) of Monroe. This pocket contains a population of approximately 153 persons. The remainder of the new interference population, 5,347 persons, occurs outside the Monroe DMA.

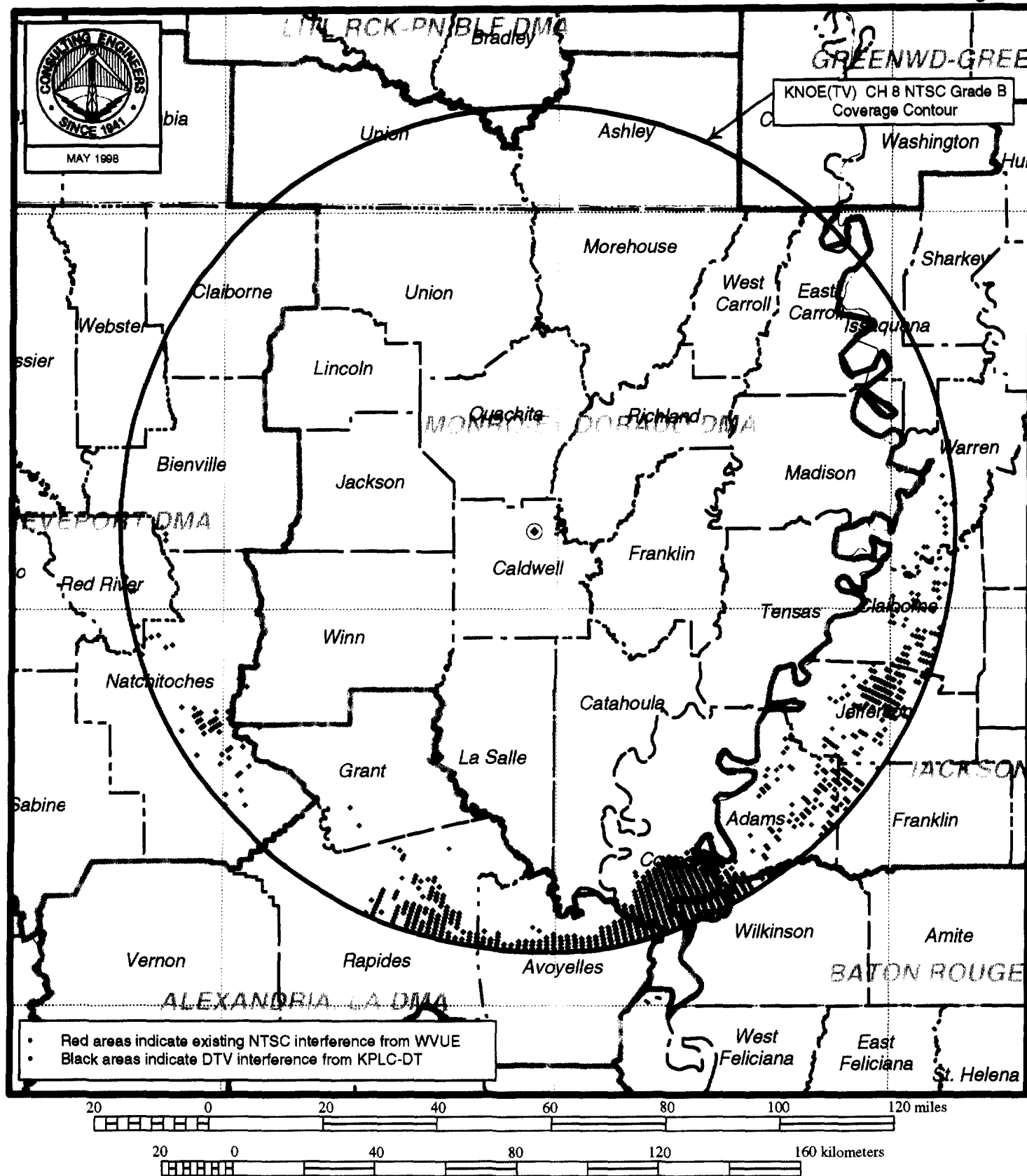
It can also be observed from Appendix B that KNOE-TV is not alone in having new interference created within the existing NTSC service areas. Of the 1,656 NTSC stations in which the Commission calculated interference values, 391 stations, or 24 percent, have new population interference values of 0.8 percent or greater. Therefore, approximately one-quarter of all existing NTSC stations have new interference to people caused by DTV with a percentage magnitude equal or greater than KNOE-TV.

  
Charles A. Cooper

May 19, 1998

du Treil, Lundin & Rackley, Inc.  
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941.366.2611

### Figure 1



**PREDICTED DTV AND NTSC INTERFERENCE TO KNOE(TV)**  
**KPLC-DT CH 8 3.2 KW (MAX-DA)**

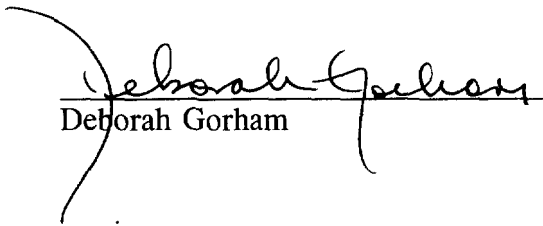
PREPARED FOR  
COSMOS BROADCASTING

du Treil, Lundin & Rackley, Inc., Sarasota, Florida

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing "Opposition to Petition for Reconsideration" was sent by first-class mail, postage prepaid, this 26th day of May, 1998, to each of the following:

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